

STATE OF MICHIGAN  
COURT OF APPEALS

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AMY L. FREIDLINE,

Plaintiff-Appellant,

v

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellee.

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UNPUBLISHED

January 14, 2003

No. 233108

Court of Claims

LC No. 00-017693-CM

Before: Murray, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiff Amy Freidline appeals as of right the court of claims opinion and order granting summary disposition to defendant Michigan Department of Transportation (MDOT). Plaintiff claims that new precedent interpreting the highway exception, MCL 691.1402(1), to governmental immunity, MCL 691.1407(1), should be applied prospectively and, therefore, governmental immunity should not bar this case. Defendant, however, argues that this new precedent applies retroactively, barring this case and making the trial court's decision to grant summary disposition proper. We affirm.

Plaintiff is a resident of Macomb County. On February 18, 1999, as plaintiff was driving north on I-75 near 14 Mile Road in the city of Troy, the driver of a vehicle traveling in the southbound lane lost control, crossed the median and entered the northbound lane, striking plaintiff's car in a head-on collision. Plaintiff's serious injuries included a broken left shoulder, a fractured left radius and ulna, a fractured right scaphoid, a fractured left femur, an ankle fractured in two places, a broken right tibia and fibula with bone loss, and other miscellaneous injuries. As a result of the collision, plaintiff is now severely disabled.

In her complaint, plaintiff contended that defendant had a duty under MCL 691.1402 "[t]o maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel," which it violated when it failed to provide adequate traffic control devices or warning signs, failed to increase the width of the median between the opposing lanes of traffic, and failed to install a median barrier between the north and south lanes of I-75. In response to the complaint, defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(7) and (C)(8). Defendant, relying on the Supreme Court's recent decision in *Nawrocki v Macomb Co Road Comm*, 463 Mich 143; 615 NW2d 702 (2000), argued that it was entitled to governmental immunity because allegations of traffic control device defects and median design defects do not fall within the scope of the highway. The court of claims concluded that

*Nawrocki* applied retroactively, and therefore granted defendant's motion for summary disposition, presumably pursuant to MCR 2.116(C)(7), dismissing the case.

Plaintiff now argues that *Nawrocki* applies only prospectively and, as a result, the court of claims erred in granting summary disposition. However, this Court concluded in *Adams v Dep't of Transportation*, 253 Mich App \_\_; \_\_ NW2d \_\_ (No. 230268, issued 10/11/02), that *Nawrocki* is to be given full retroactive effect.

As for plaintiff's argument that *Nawrocki* is irrelevant to this case because plaintiff's claim is based upon inadequate design of the highway median, then plaintiff must lose under *Hanson v Mecosta Co Rd Comm'rs*, 465 Mich 492, 502; 638 NW2d 396 (2002). The essence of plaintiff's complaint is that the portion of I-75 where she suffered the accident should have been designed to make travel safer. *Hanson, supra*, plainly allows defendant to claim immunity from tort liability for this sort of highway design defect claim.

Affirmed. Defendant may tax costs.

/s/ Christopher M. Murray  
/s/ David H. Sawyer  
/s/ E. Thomas Fitzgerald